

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GARY A. SMITH, TAMARA SMITH h/w,
Plaintiffs,**

CIVIL ACTION

v.

**HOWMEDICA OSTEONICS CORP. AND
STRYKER CORPORATION,
Defendants.**

NO. 17-1174

ORDER

AND NOW, this 27th day of April, 2017, upon consideration of the Defendants' Motion to Dismiss (ECF #4), the Plaintiffs' Response in Opposition (ECF #6), and the Defendants' Reply thereto (ECF #8), **IT IS ORDERED** as follows:

- (1) The motion to dismiss Plaintiffs' strict liability claim is **GRANTED** insofar as it alleges a design defect, and **DENIED** insofar as it alleges a manufacturing defect. Count One is **DISMISSED** insofar as it alleges a design defect.
- (2) The motion to dismiss Plaintiffs' negligence claim is **GRANTED**. Count Two is **DISMISSED**.
- (3) The motion to dismiss Plaintiffs' claim for breach of the implied warranty of merchantability is **GRANTED** insofar as it alleges a design defect, and **DENIED** insofar as it alleges a manufacturing defect. Count Three is **DISMISSED** insofar as it alleges a design defect.
- (4) The motion to dismiss Plaintiffs' claim for loss of consortium is **DENIED**.

BY THE COURT:

/s/ Wendy Beetlestone, J.

WENDY BEETLESTONE, J.